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8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 MELVYN I. NEFSKY
13 3359 Mandeville Canyon Road
14 Los Angeles, CA 90049

15 Certified Public Accountant License No. CPA
16 15025

17 Respondent.

Case No. AC-2006-23

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

18 FINDINGS OF FACT

19 1. On or about September 12, 2006, Complainant Carol Sigmann, in her
20 official capacity as the Executive Officer of the California Board of Accountancy (Board),
21 Department of Consumer Affairs, filed Accusation No. AC-2006-23 against MELVYN I.
22 NEFSKY (Respondent) before the Director of Consumer Affairs.

23 2. On or about December 12, 1969, the Board issued Certified Public
24 Accountant License No. CPA 15025 to Respondent. As of January 1, 2006, Respondent's
25 license is in delinquent status.

26 3. On September 25, 2006, Rita Cruz, an employee of the Department of
27 Justice, served, by Certified and First Class Mail, a copy of Accusation No. AC-2006-23,
28 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code

1 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
2 was and is:

3 3359 Mandeville Canyon Road
4 Los Angeles, CA 90049

5 A copy of the Accusation, the related documents, and Declaration of Service are attached
6 as exhibit A, and are incorporated herein by reference.

7 4. Service of the Accusation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c).

9 5. Government Code section 11506 states, in pertinent part:

10 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
12 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
13 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

14 6. Respondent failed to file a Notice of Defense within 15 days after service
15 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
16 Accusation No. AC-2006-23.

17 7. California Government Code section 11520 states, in pertinent part:

18 "(a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions or
20 upon other evidence and affidavits may be used as evidence without any notice to
21 respondent."

22 8. Pursuant to its authority under Government Code section 11520, the Board
23 finds Respondent is in default. The Board will take action without further hearing and, based on
24 Respondent's express admissions by way of default and the evidence before it contained in
25 exhibit A, finds that the allegations in Accusation No. AC-2006-23 are true.

26 9. The total costs for investigation and enforcement are \$3900.40 as of
27 November 1, 2006.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent MERLVY NEFSKY
3 has subjected his Certified Public Accountant License No. CPA 15025 to discipline.

4 2. A copy of the Accusation and the related documents and Declaration of
5 Service are attached.

6 3. The Board has jurisdiction to adjudicate this case by default.

7 4. The Board is authorized to revoke Respondent's Certified Public Account
8 License based upon the following violations alleged in the Accusation:

9 a. Respondent is subject to disciplinary action under section 5100
10 subdivision (c) of the Business and Professions Code ("Code") in that Respondent failed to
11 complete 2004 individual and corporate tax returns for his clients, Thomas and Judith Holland
12 ("Hollands"), causing them to incur substantial federal and state tax penalties.

13 b. Respondent is subject to disciplinary action under section 5037,
14 subdivision (b) and California Code of Regulations, title 16, section 68, for failing to return the
15 Hollands' books and records after the Hollands made specific requests to the Respondent to do
16 so.

17 ORDER

18 WHEREFORE, for the aforesaid causes the following order is made:

19 Certified Public Accounting license No. CPA 15025 issued to MERLVY NEFSKY is
20 revoked.

21 Pursuant to Government Code Section 11520, respondent may, within seven (7) days
22 after service of this decision on the respondent, serve a written motion requesting that this
23 decision be vacated and stating the grounds relied on. Said written motion shall be sent to
24 California Board of Accountancy, 2000 Evergreen Street, Suite 250, Sacramento, CA 95815-
25 3832. The Board, in its discretion, may vacate this decision and grant a hearing on a showing of
26 good cause.

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1 The Decision shall be effective on January 7, 2007.

2 DATED: December 8, 2006.

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Ronald Blanc
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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Exhibit A
Accusation No.AC-2006-23,
Related Documents and Declaration of Service

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CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2006-23

12 MELVYN I. NEFSKY
3359 Mandeville Canyon Road
13 Los Angeles, CA 90049-1017

OAH No.

A C C U S A T I O N

14 Certified Public Accountant License No. CPA
15 15025

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy (Board), Department of
22 Consumer Affairs.

23 2. On or about December 12, 1969, the Board issued Certified Public
24 Accountant License No. CPA 15025 to Melvyn Nefsky (Respondent). The license was in full
25 force and effect at all times relevant to the charges brought herein against Respondent. And,
26 now, as of January 1, 2006, Respondent's license is in delinquent status.

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JURISDICTION

3. This Accusation is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5037, subdivision (b) states:

“(b) A licensee shall furnish to his or her client or former client, upon request and reasonable notice:

(1) A copy of the licensee’s working papers, to the extent that those working papers include records that would ordinarily constitute part of the client’s records and are not otherwise available to the client.

(2) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client’s premises or received for the client’s account. The licensee may make and retain copies of documents of the client when they form the basis for work done by him or her.”

5. Section 5100 states:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

.....

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

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1 6. Section 5109 states:

2 "The expiration, cancellation, forfeiture, or suspension of a license, practice
3 privilege, or other authority to practice public accountancy by operation of law or by order or
4 decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall
5 not deprive the board of jurisdiction to commence or proceed with any investigation of or action
6 or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the
7 license."

8 7. Section 5107 provides, in pertinent part, that the Board's Executive
9 Officer may request the administrative law judge, as part of the proposed decision in a
10 disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a
11 violation or violations of this chapter to pay to the Board all reasonable costs of investigation and
12 prosecution of the case, including, but not limited to, attorney's fees. The board shall not recover
13 costs incurred at the administrative hearing.

14 8. California Code of Regulations, title 16, section 68, states, in pertinent
15 part:

16 "A licensee, after demand by or on behalf of a client, for books, records or other
17 data, whether in written or machine sensible form, that are the client's records shall not retain
18 such records. Unpaid fees do not constitute justification for retention of client records . . ."

19 FIRST CAUSE FOR DISCIPLINE

20 (Gross Negligence)

21 9. Respondent is subject to disciplinary action on the grounds of
22 unprofessional conduct as defined in section 5100, subdivisions (c), by reason of the following:

23 a. Respondent failed to complete 2004 individual and corporate tax returns
24 for his clients causing them to incur substantial federal and state tax penalties. Specifically,
25 Thomas and Judith Holland (Hollands) engaged the services of Respondent to file their 2004
26 individual and corporate tax returns. The Hollands paid the respondent \$12,000 to prepare said
27 tax returns. The Hollands provided Respondent with all the necessary documents on or before
28 March 1, 2005.

1 In November of 2005, Respondent notified the Hollands that their tax returns for 2004 were soon
2 to be completed. However, Respondent never provided the returns to the Hollands.
3 Consequently, the Hollands paid another accountant \$4,000 to complete their returns.
4 Respondent's actions were grossly negligent within the meaning of Code section 5100,
5 subdivision (c), for failing to properly complete the Hollands' individual and corporate tax
6 returns. Respondent's negligence caused the Hollands to file late returns subjecting them to
7 federal and state tax penalties.

8 SECOND CAUSE FOR DISCIPLINE

9 (Retention of Client Records)

10 10. Respondent is subject to disciplinary action as defined in section 5037,
11 subdivision (b) and California Code of Regulations, title 16, section 68, for failing to return
12 books and records, after demand by the client, to the client. The facts and circumstances are as
13 follows:

14 a. From November 17, 2005 through April 10, 2006, Respondent failed to
15 respond to repeated requests from the Hollands to return their original records. Specifically, the
16 Hollands made specific written requests to the Respondent to return their records on November
17 17, 2005, December 17, 2005 and April 4, 2006.

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PRAYER

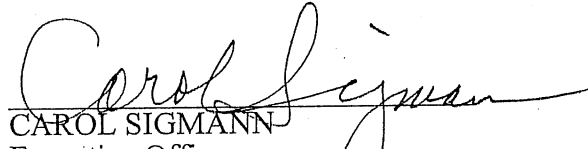
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending Certified Public Accountant License No. CPA 15025, issued to Melvyn Nefsky.

2. Ordering Melvyn Nefsky to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED: September 12, 2006


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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